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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,713	10/02/2003	Daniel M. Martelli	1200212R	9171
35227 7590 06/12/2008 POLYONE CORPORATION 33587 WALKER ROAD AVON LAKE, OH 44012				
EXAMINER				
CHEVALIER, ALICIA ANN				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
06/12/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/677,713

**Applicant(s)**

MARTELLI, DANIEL M.

**Examiner**

ALICIA CHEVALIER

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6, 8-10, 13 and 15-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8-10, 13 and 15-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/808)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### RESPONSE TO AMENDMENT

1. Claims 1-4, 6, 8-10, 13 and 15-18 are pending in the application, claims 5, 7, 11, 12 and 14 have been cancelled.
2. Amendments to the specification and the claims, filed on September 21, 2007, have been entered in the above-identified application.

### REJECTIONS

3. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

#### *Claim Rejections - 35 USC § 102*

4. Claims 1-4, 6, 8-10, 13 and 16-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Akao et al. (U.S. Patent No. 5,384,173).

Akao discloses a molded thermoplastic container (*title*) comprising an outer surface with an etc pattern, which is deemed to be a matte finish, and a colorant present in the thermoplastic product ranging from about 0.01 to about 15 parts by weight of thermoplastic resin (*col. 12, lines 65-66*). The colorant is deemed to be a frost colorant and light-diffusing particles since it is made from barium sulfate (*col. 12, lines 50-51*). The thermoplastic resin is transparent (*col. 3, line 25*). The particles are present in the thermoplastic product ranging from about 0.2 to about 5 parts by weight of thermoplastic resin and comprises any form of powders, fibers, whiskers, platelets, flakes, aggregated or mixtures of these (*col. 12, lines 50-51*). The etched pattern has

depressions ranging from about 0.1 to about 100 microns, more specifically about 0.5 to 10 microns (*col. 2, lines 49-51*). The ratio of depressions to lands in the surface area can range from about 1 to about 90 percent, more specifically about 50 to about 80 percent (*col.2, lines 47-49*). The light-diffusing particles are deemed to add diffused translucency and the etched pattern is deemed to add tactile texture to the product.

The limitation “the etched pattern is microreplicated” is a method limitation and does not determine the patentability of the product, unless the process produces unexpected results. The method of forming the product is not germane to the issue of patentability of the product itself, unless Applicant presents evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. MPEP 2113.

***Claim Rejections - 35 USC § 103***

5. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Akao et al. (U.S. Patent No. 5,384,173).

Akao is relied upon as described above.

Akao fails to disclose the average maximum particle size of about 0.1 to about 200 microns.

It is deemed a matter of optimization via routine experimentation of properties to make the particle size from about 0.1 to about 200 microns as recited in Applicant’s claim 15 when making the product. See MPEP 2144.05.

***ANSWERS TO APPLICANT'S ARGUMENTS***

6. Applicant's arguments in the response filed September 21, 2007 regarding the objection to the specification, the 35 USC 112 rejection and 35 USC 102 rejection over Hirata of record have been considered but are moot since the rejections have been withdrawn.

31. Applicant's arguments in the response filed September 21, 2007 regarding the 35 USC 102 and 103 rejections over Akao of record have been carefully considered but are deemed unpersuasive.

Applicant argues that Akao does not disclose "an outer surface having a matte finish with an etch pattern ..." as required by claim 1. Applicant further points out that the matte finish in Akao is on the inner peripheral wall" of a container.

The fact that Akao uses the matte finish etc surface as the inner wall of a container does not diminish the fact the inner wall of the container is still on outer surface. The only requirement of an outer surface is that it is not covered another layer. The container of Akao has two outer most surfaces, one that forms the outer wall and one that forms the inner wall.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Alicia Chevalier/  
Primary Examiner, Art Unit 1794  
6/11/2008